

# EXHIBIT A

1 UNITED STATES DISTRICT COURT

2 EASTERN DISTRICT OF NEW YORK

3 SUSANNA MIRKIN, et al., . Docket No.  
4 Plaintiffs, . 1:18-CV-02949-ARR-JAM  
5 v. . Brooklyn, New York  
6 XOOM ENERGY, LLC, et al., . Friday, January 19, 2024  
7 Defendants. . 11:00 a.m.  
8 . . . . .

9  
10 TRANSCRIPT OF STATUS CONFERENCE  
11 BEFORE THE HONORABLE JOSEPH A. MARUTOLLO  
12 UNITED STATES MAGISTRATE JUDGE

13 APPEARANCES:

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1 I'll order that the joint pre-trial order and motions in  
2 limine be filed by April 3rd. And again, the joint pre-trial  
3 order pursuant to Judge Ross's rule include the motions in  
4 limine, right? So that's not unique to her rule, so just to  
5 be -- for the parties to follow her rules closely in terms of  
6 what precisely is required for her joint pre-trial order,  
7 that should be filed by no later than April 3rd.

8 Again, in terms of the class decertification, I  
9 won't set a deadline now, but I will put a note in the docket  
10 entry that the Defendant has raised it and is contemplating a  
11 motion, unless Defendant has a deadline in mind or a timing  
12 in mind as to when that pre-motion conference letter will be  
13 filed or if that will be filed.

14 MR. MATTHEWS: Your Honor, I'm sorry. On the  
15 motion to decertify, I don't believe that falls within Judge  
16 Ross's requirements for a pre-motion letter. That's not one  
17 of the categories of motions that is specified requires such  
18 a letter, but we don't plan to delay this motion. It's  
19 contended that we started working on and intend to get in  
20 front of it in the next few weeks, but I don't think that a  
21 letter is required.

22 I feel like I have to note just the suggestion that  
23 we have just now -- that Plaintiff is just learning of these  
24 motions for the first time on this call is just -- that's not  
25 just not accurate. We forecasted them in writing in prior

1 filings.

2 But we can comply with 75 days. Despite what this  
3 call may suggest, we have a pretty good working relationship  
4 with Plaintiffs' Counsel, and we'll confer with them to get  
5 that set up, and if something comes up that requires and the  
6 parties need more time, we'll circle back with you as you  
7 suggested.

8 THE COURT: Well, I am going to order the parties  
9 to file a letter that's directed to Judge Ross. That isn't  
10 for a pre-motion conference, but given the unique  
11 circumstances here, that lays out a proposed schedule for  
12 Defendants' motion to decertify the class, and I'll order you  
13 to file that letter -- I'll order Defendants to file that  
14 letter -- actually, you know what? Let me just backtrack  
15 here for a second.

16 I appreciate that her rules don't require a  
17 pre-motion conference for this type of motion, but given the  
18 history of this litigation, I do think it's wise to file  
19 something similar to that. So what I'm going to require is  
20 that by January 31st, the parties submit a joint letter not  
21 to exceed six pages in which the Defendant briefly goes over  
22 the proposed motion to decertify the class and the Plaintiff  
23 note their opposition and that a proposed briefing scheduled  
24 agreed upon by the parties that the motion precede.

25 And that should be addressed to Judge Ross.

1 Now, that may ultimately get referred to me, but in  
2 the first instance, that should be addressed to Judge Ross.

3 I'll put all of this in an order after the  
4 conference.

5 MR. MATTHEWS: Thank you, Your Honor.

6 THE COURT: One other thing I just want to raise,  
7 and this may have already come up over the course of the  
8 litigation, but has there been mediation here? A settlement  
9 conference? Any discussion about settlement?

10 MR. WITTELS: Your Honor, this is Plaintiffs'  
11 Counsel Steven Wittels. We've repeatedly asked during the  
12 past five years for Defendants to mediate in all matter of  
13 forms -- letters, orally, and we've received no response.  
14 Every turn has been blocked as they're doing now, and we're  
15 ready to go to trial.

16 If they want to mediate, we're available and ready.

17 MR. MATTHEWS: I guess there was -- before my firm  
18 substituted in, there was some discussion of, I believe, an  
19 individual settlement. Since we substituted in, Mr. Wittels  
20 is right that there have been a couple of times he's raised  
21 settlement. We have responded. I've gotten back to him both  
22 times.

23 We didn't take him up on it, but I just -- again,  
24 we haven't ignored him. It's just not a discussion that  
25 we've had --

1 date, that could complicate the process that Your Honor has  
2 outlined.

3 So I just wanted to --

4 THE COURT: Understood.

5 MR. WITTELS: -- bring that to everyone's  
6 attention.

7 THE COURT: Understood. All right. Well, thanks  
8 very much. We'll set an order after this conference.

9 MR. MATTHEWS: Thank you, Your Honor.

10 MR. MCINTURFF: Thank you, Your Honor.

11 MR. WITTELS: Good day.

12 (Proceedings adjourned at 11:36 a.m.)  
13

14 TRANSCRIBER'S CERTIFICATE

15 I certify that the foregoing is a correct  
16 transcript from the electronic sound recording of the  
17 proceedings in the above-entitled matter.  
18

19 February 6, 2024

20 *Faith Vance*

21 Faith Vance

\_\_\_\_\_  
DATE

22 Legal Transcriber  
23  
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